

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANIKA ALFARO
Plaintiff,

vs.

DON-LYN EXPRESS AND
THOMAS SMITH
Defendants

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 5:21-CV-01133

DEFENDANT’S NOTICE OF REMOVAL

Now comes Defendant, DON-LYN EXPRESS II, INC. (*Incorrectly named as Don-Lyn Express*) (herein “Defendant”) pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446, and gives notice to this Court of the removal of the case styled: *Anika Alfaro v Don-Lyn Express and Thomas Smith*; Cause Number 2021CI18237 in the 408th Judicial District Court, Bexar County, Texas, (“Lawsuit”) to the United States District for the Western District of Texas, San Antonio Division, and respectfully shows as follows:

The Parties & Procedural History

1. Anika Alfaro (“Plaintiff”) filed his Original Petition styled: *Anika Alfaro v. Don-Lynn Express and Thomas Smith*, Cause Number 2021CI18237 in the 408th Judicial District Court, Bexar County, Texas on August 31, 2021. In her Lawsuit, Plaintiff makes allegations of negligence against the Defendant and pleads “Plaintiff seeks monetary relief of more than \$1,000,000.” See Plaintiff’s Original Petition, included in **Exhibit A**.
2. Defendant was served with the Lawsuit by Citation on October 26, 2021. Defendant filed a timely Answer and entered an appearance in the Lawsuit with the state court on November 16, 2021.

Removal Based on Diversity Jurisdiction

3. Defendant files this Notice of Removal as required by 28 U.S.C § 1446, removing this case to the U.S. District Court for the Western District of Texas, San Antonio Division because it falls within this Court's diversity subject-matter jurisdiction under 28 U.S.C. § 1332.

4. Defendant's filing of this Notice of Removal is timely under 28 U.S.C. § 1446(b) because the Lawsuit and citation in this action were first served on October 26, 2021, by service upon Defendant, making the last day to remove November 25, 2021.

5. Removal is proper because there is complete diversity between the Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a):

- a) Plaintiff is a citizen of Texas. Plaintiff's Original Petition states that she resides in San Antonio, Texas.¹
- b) Defendant, Don-Lyn Express II, Inc., is headquartered in California and was served with the Lawsuit by service on its registered agent in Bakersfield, California, on October 26, 2021. Defendant does not maintain an office in the state of Texas.
- c) Defendant Thomas Smith has not been served with the Lawsuit to date. He resides in Oklahoma City, Oklahoma.²
- d) The amount in controversy exceeds \$75,000, excluding interest, costs and attorneys' fees. *See* 28 U.S.C. § 1332(a).³

¹ See Plaintiff's Original Petition included in Exhibit A.

² See Plaintiff's Original Petition included in Exhibit A.

³ See Plaintiff's Original Petition included in Exhibit A.

Venue is Proper

6. Venue of this removed action is proper in this Court because this district and division embrace the place where the state-court removed action has been pending. 28 U.S.C.A. §1441(a).

No Waiver

7. By virtue of this removal petition, Defendant does not waive its right to assert any claims, pleas, or motions, including, if any, pleas in abatement, motions to compel arbitration, and motions permitted by Rule 12 of the Federal Rules of Civil Procedure.

Defendant Has Met the Other Requirements for Removal

8. Defendant has complied with all applicable provisions of 28 U.S.C.A. §1441 *et seq.*, the applicable Federal Rules of Civil Procedure, and the Local Rules in this District. Defendant was first served with the Original Petition on October 26, 2021. Therefore, Defendant filed this Notice of Removal within the 30-day time-period required by 28 U.S.C. §1446(b).

9. Defendant attached hereto those materials required to be filed upon removal in accordance with Rule 81 of the Local Rules for the United States District Court, Western District of Texas. Additionally, the filing fee of \$402.00 has been tendered to the Clerk of the United States District Court for the Western District of Texas, San Antonio Division, along with the original Notice of Removal.

Attachments

9. Pursuant to 28 U.S.C. § 1446(a) and Rule 81, attached are the following documents:

| | |
|-----------|--|
| Exhibit A | All pleadings, process, orders and all other filings in the State Court Action |
| Exhibit B | State Court Case Summary |
| Exhibit C | Index of matters being filed |
| Exhibit D | A list of all counsel of record, including addresses, telephone numbers and parties represented. |

| | |
|-----------|---|
| Exhibit E | Notice to State Court of Removal to Federal Court” to be filed with the Bexar County District Clerk, Texas. |
|-----------|---|

Notice to State Court

10. Pursuant to 28 U.S.C. § 1446(d), Defendant shall promptly serve a copy of this Notice of Removal on Plaintiff and shall promptly file a copy of this Notice of Removal with the Bexar County District Clerk, 408th Judicial District Court, Bexar County, Texas. A copy of the “Notice to State Court of Removal to Federal Court” (without exhibits) will be filed with the Bexar County District Clerk, Bexar County, Texas is attached hereto as **Exhibit “D”**.

Defendant, Don-Lyn Express II, Inc. (*Incorrectly named as Don-Lyn Express*), requests that this action be removed from the 408th Judicial District Court, Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

Christiana “Chrissy” Dijkman

Christiana Dijkman

Fed. ID No. 15565

SBN: 00783967

LAW OFFICE OF JOHN MARTINEZ

1100 Northwest Loop 410, Suite 370

San Antonio, TX 78213

210-949-0166

956-238-0194: Direct

855-949-1338: Fax

dijkmc1@nationwide.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2021, I electronically filed the foregoing instrument with the Clerk of the Court using CM/ECF and hereby certify that I have faxed a copy of the above and foregoing, to the following non-CM/ECF participant:

Gilberto Falcon
SBN 24066525
The Law Office of Gilberto Falcon, PLLC
404 N. Britton Avenue
Rio Grande City, Texas 78582
956.487.6363
956.487.6336
gilberto@gilbertofalconlaw.com

~And~

David Joe
The Law Office of David Royse Joe
375 South 10th Street
Raymondville, Texas 78580
davidroysejoe@yahoo.com
Attorney for Plaintiff

/S/ Christiana “Chrissy” Dijkman
Christiana “Chrissy” Dijkman